

**INSTRUCTIONS FOR PRE-TRIAL STIPULATION FOR
PROCEEDINGS RE: CREDIT CARD USE UNDER 11 U.S.C. 523(a)(2)(A)**

1. A model Pre-Trial stipulation (“model”) is attached re Credit Card Use under 11 U.S.C. 523(a)(2)(A). Please see the separate “Judges Forms & Instructions” topic for a model for all other Pre-Trial Stipulations.
2. Pre-Trial Stipulations for proceedings re: credit card use under 11 U.S.C. 523(a)(2)(A) must follow the attached model.
3. Each Pre-Trial Stipulation must contain the following:
 - a. **Section I** - underlying issues of fact:
 - i. State whether each fact is contested or not contested. If the fact is contested, provide a brief statement of each party’s position and list proposed witnesses and exhibits.
 - b. **Section II** - issues of fact concerning intent:
 - i. List the elements of intent as stated in the model.
 - ii. Identify for each element or affirmative defense whether it is contested or not contested. If the element is contested:
 - Provide a brief statement of each party’s position.
 - List the witnesses, admissions, and exhibits that reasonably pertain to the contested element.
 - Note the elements established by pleading, admission, and stipulations.
 - c. **Section III** - plaintiff’s exhibits:
 - i. The parties must stipulate to the authenticity and admissibility of exhibits unless an objection is raised. (See Section V below.)
 - ii. Copies of each exhibit must be attached unless the exhibit is to be used for impeachment purposes only. Copies must be legible.
 - iii. Objections of exhibits:
 - Recite in a separately filed document any evidentiary objections and any response to said objections. See the model for filing and serving requirements. The court shall rule upon these objections at the Pre-trial Conference. Any objections that could have been raised at this stage of the proceeding and are not shall be deemed waived.
 - d. **Section IV** - defendant’s exhibits. Same instructions as Section III.
 - e. **Section V** - witnesses.
 - i. List the witnesses each party shall call to testify at trial.
 - ii. Summarize their intended testimony.
 - iii. Estimate the length of time for the direct and cross examination of each witness.
 - iv. See model for rebuttal testimony and Stipulation.

This is a model Pre-Trial stipulation. Please submit all stipulations for credit card use, under 11 U.S.C. 523 (a)(2)(A), in this format. Please note: Any text in *italics* is for instructional purposes only and should not be included in the Order.

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA

In re

Debtor(s).

BK. No. LA
Adv. No. LA

Chapter

**PRETRIAL STIPULATION FOR
CLAIM FOR RELIEF CONCERNING
CREDIT CARD USE UNDER 11 U.S.C.
SECTION 523(a)(2)(A); ORDER
THEREON**

Plaintiff(s),
v.

Defendant(s).

DATE:
TIME:
**PLACE: 255 E. Temple Street
Courtroom 1368
Los Angeles, CA 90012**

_____, plaintiff in this adversary proceeding (“Plaintiff”), and
and _____, defendant(s) in this adversary proceeding
 (“Defendant”), SUBMIT THE FOLLOWING JOINT PRE-TRIAL ORDER in accordance
 with Local Bankruptcy Rule 7016-1(b)(2).

I. UNDERLYING ISSUES OF FACT

A. Defendant applied to Plaintiff for credit on _____ 20__ (the "Application"). A true, correct, and legible copy of the Application is Plaintiff's Exhibit #1.

(The following format is to be used for each fact stated below.)

Contested or Not Contested

[If contested, state contentions and list proposed witnesses and exhibits that pertain to this issue]

Plaintiff:

Defendant:

B. Plaintiff agreed to provide credit to Defendant up to \$_____ through a revolving credit account for Defendant's use ("Account #1"). True, correct, and legible copies of the statements for Account #1 for the period of time at issue is Plaintiff's Exhibit #2.

C. Repeat B for all accounts at issue.

D. The nature (cash advance, purchase, etc.), date, and the amount of each charge at issue for Account #1 is accurately summarized in Plaintiff's Exhibit 3.

E. Repeat D for other accounts.

F. Defendant's bankruptcy case was commenced on _____, 20__ under Chapter ___ by the filing of a(n) (in)voluntary petition.

II. ISSUES OF FACT CONCERNING INTENT

A. Pursuant to *In re Eashai*, 87 F.3d 1082 (9th Cir. 1996), a claim under section 523(a)(2)(A) requires a showing of the following:

(1) The debtor made an affirmative representation to the person

1 claiming fraud. Pursuant to *In re Eashai*, the mere use of the credit is an affirmative
2 representation. (The following format is to be used for each factor listed below.)

3 **Contested or Not Contested**

4 **Plaintiff:** (See p. 2,I,A)

5 **Defendant:**

6 (2) At the time of the representation the debtor knew of its falsity.
7 Pursuant to *In re Anastas*, 94 F.3d 1280 (9th Cir. 1996), the defendant either
8 intentionally or with recklessness as to the truth or falsity, made representation that he
9 intended to repay the debt.

10 **Contested or Not Contested**

11 **Plaintiff:** (See p. 2,I,A)

12 **Defendant:**

13 (3) Pursuant to *In re Anastas*, 94 F.3d 1280 (9th Cir. 1996), the debtor
14 made the representations with the intention and purpose of deceiving the creditor.

15 **Contested or Not Contested**

16 **Plaintiff:** (See p. 2,I,A)

17 **Defendant:**

18 (4) The creditor justifiably relied on the card holder's representation
19 of intent to repay.

20 **Contested or Not Contested**

21 **Plaintiff:** (See p. 2,I,A)

22 **Defendant:**

23 (5) The creditor sustained the alleged loss and damage as the
24 proximate result of the representations having been made.

25 **Contested or Not Contested**

Plaintiff: (See p. 2,I,A)

Defendant:

B. Pursuant to *In re Dougherty*, 84 B.R. 653 (B.A.P. 9th Cir. 1988), the following facts are pertinent in determining whether at the time Defendant made the charges at issue, Defendant did not intend to repay Plaintiff.

(1) The length of the time between the charges made and the filing of the bankruptcy was _____.

(2) An attorney [was or was not] consulted concerning the filing of bankruptcy before the charges were made.

(3) The number of charges in issue is _____.

Contested or Not Contested

(4) The amount of the charges in issue is _____.

Contested or Not Contested

(5) The financial condition of the Defendant at the time the charges were made was _____.

Contested or Not Contested

(6) The charges [were or were not] above the credit limit of Account # _____ when made.

Contested or Not Contested

(7) The Defendant made multiple charges on the same day. [See Exhibit 3 and _____].

Contested or Not Contested

(8) At the time the charges in issue were made, Defendant's employment status was _____. [Specify monthly income and expenses].

Contested or Not Contested

(9) The Defendant's prospects for employment were _____.

Contested or Not Contested

(10) The financial sophistication of the Defendant was _____.

Contested or Not Contested

(11) There [was or was not] a sudden change in the Defendant's buying habits. The sudden change was _____.

Contested or Not Contested

(12) The purchases were made for [luxuries or necessities]. [Specify nature of purchases].

Contested or Not Contested

III. PLAINTIFF'S EXHIBITS

Plaintiff's exhibits are attached to this order as Appendix I. The parties stipulate that the exhibits provided in Appendix 1 to this order are authentic and admissible. [Defendant contests the admissibility of the exhibits provided in the concurrently filed "Motion to Exclude Evidence".] *Include the language in brackets ONLY if there are objections to the admission of exhibits.*

IV. DEFENDANT'S EXHIBITS

Defendant's exhibits are attached to this order as Appendix 2. The parties stipulate that the exhibits listed in Appendix 2 to this order are authentic and admissible.

If there is a dispute as to the authenticity or admissibility of either party's exhibits, the objecting party shall file and serve concurrently with this the Pre-Trial stipulation any motion to exclude evidence with supporting memorandum of points and authorities. Any response to the objection shall be filed and served two court days prior to the pre-trial conference. All objections to the admission of exhibits shall be

resolved at the pre-trial conference. The failure to object to the admission of exhibits listed in Appendices 1 and 2 shall be deemed a waiver of any objections.

V. WITNESSES

A. Plaintiff:

A list of the only witnesses Plaintiff shall call to testify at trial, a summary of their intended testimony, and an estimate of the length of direct and cross examination is attached to this order as Appendix 3.

B. Defendant:

A list of the only witnesses Defendant shall call to testify at trial, a summary of their intended testimony, and an estimate of the length of direct and cross examination is attached to this order as Appendix 4.

C. REBUTTAL TESTIMONY

Plaintiff, who has the burden of establishing each element of its claim(s) for relief, will be the first to introduce evidence to prove the facts necessary to enable Plaintiff to recover. When Plaintiff rests, Defendant may then present evidence to contravene any of Plaintiff's claims or in support of any affirmative defenses which the Defendant has and included in this pre-trial order. After the close of Defendant's case, Plaintiff may present rebuttal witnesses only to counter evidence previously submitted by Defendant on issues not raised in Plaintiff's original presentation of its case.

STIPULATION

The foregoing admissions have been made by the parties, and the parties have specified the foregoing issues of fact and law remaining to be litigated. Therefore, this order shall supersede the pleadings and govern the course of trial in this adversary proceeding, unless modified to prevent manifest injustice.

IT IS SO STIPULATED.

Dated: _____

Attorney for Plaintiff

IT IS SO STIPULATED.

Dated: _____

Attorney for Defendant

ORDER

IT IS SO ORDERED.

DATED:

VINCENT P. ZURZOLO
United States Bankruptcy Judge